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MS Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450,
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Dated: January 13, 2009

Signature:

(Orville R. Gockings)

Docket No.: MAVERICK 3.0-004
CONT CONT CONT
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of:
Chapman et al.

Application No.: 10/733,129

Group Art Unit: 2855

Filed: December 11, 2003

Examiner: G. K. Verbitsky

For: WIRELESS REMOTE COOKING
THERMOMETER SYSTEM

APPLICANT'S REPLY BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Madam:

This Reply Brief is submitted in response to the Examiner's Answer mailed November 13, 2008. The brief is particularly directed to the section of the Examiner's Answer entitled "Response to Arguments." (Examiner's Answer Section (10)). In addition, Applicants' responses for the most part address each of the Examiner's arguments in turn as they appear in this section. A request for oral hearing is being filed concurrently with this brief.

I. PRIOR ART**A. The References Do Not Support The Examiner's Interpretation of "Computer"**

Applicants respectfully submit that the Examiner's emphasis on the definition of "computer" is misplaced and improper. (Examiner's Answer 10.) For example, the Examiner states that "in view of lack, in patent specification, of any specialized definition of 'computer' that would restrict it to computer having specific set of characteristics and capabilities," it should, therefore, be understood "that the term of 'computer' could be interpreted as a portable/hand held device." (*Id.*) Initially, Applicants note that the term "computer" does not appear in the claims at issue. Thus, it is unclear why the Examiner places such emphasis on what the possible definitions of "computer" may be - particularly with respect to what's disclosed in Applicants' specification.

It is significant that the prior art relied on by the Examiner does not support her argument that a computer should be interpreted as a portable/hand-held device. In this regard, FIG. 4 of *May* shows that, at the time of the invention, the term "computer" should not reasonably be considered to include a portable/hand-held device. The Examiner points to no support for her argument that "computer" should be interpreted to encompass hand-held devices. Accordingly, Applicants respectfully submit that the Examiner's interpretation that *Heagle's* computer may comprise the second unit as claimed is not reasonable.

B. Tymkewicz Teaches Away From The Claimed Invention

While the Examiner finds unpersuasive Applicants' argument that in *Tymkewicz* it is the operator that makes the unpersuasive, the Examiner nevertheless acknowledges that in *Tymkewicz* "the operator makes his decision based on the data

shown on the display allowing the operator to see the temperature of the food being cooked and then to recognize the status of the food (i.e., 'W') corresponding to said temperature." (*Id.* at 11 (emphasis added).) This is precisely Applicants' point. *Tymkewicz* requires action or a decision by the operator "to recognize the status of the food being cooked."

In particular, *Tymkewicz* only discloses a microprocessor used to account for differences between the actual measured temperature and the "temperature-proportional digital signal." (*Tymkewicz*, col. 2, ll. 31-39; col. 6, ll. 21-40; col. 7, ll. 27-30.) In contrast, the claims recite that the microprocessor is "operative to calibrate a taste preference and a choice preference associated with the food being cooked," as is recited, for example, in claim 1. Thus, while *Tymkewicz* requires that the operator makes his decision by looking at the "temperature of the food being cooked" (the Examiner's words), the claims do not require this interaction at all by the operator. Significantly, it is the microprocessor that does the calibration for the taste and choice preference, not the operator per *Tymkewicz*.

Further with regard to *Tymkewicz*, the Examiner continues to confuse the calibration done in *Tymkewicz* to determine the difference between an actual measured temperature and the "temperature-proportional digital signal" with calibrating an item of food for taste and choice preference. These are two entirely different types of calibration, and one is not an extension of the other. *Tymkewicz*, in sum, therefore teaches away from the claimed invention because: (1) it's the operator that determines taste preference; and (2) the reference does not disclose calibrating taste and meat preferences using a microprocessor.

C. The Other Secondary Preferences

With regard to *May*, Applicants appreciate that the Examiner is only relying on this reference "as a secondary reference only for its teaching that a remote second unit has a microprocessor and video and sound (noise generating) interface." (Examiner's answers 11-12.) Applicants respectfully believe, however, that *May* is significant also in that it teaches an entirely different way of cooking food to a desired choice. In this regard, *May* is instructive vis-à-vis the state of the art to which the invention is most relevant at the time of the invention.

Applicants also appreciate that the Examiner does not rely on either *Chung* or *Archard* for disclosing a microprocessor.

II. SECONDARY CONSIDERATION

With regard to Applicants' evidence relating to secondary considerations, Applicants appreciate that the Examiner "has thoroughly reviewed" Applicants' arguments. Applicants note, however, that the evidence submitted not only establishes commercial success, but also recognition by the industry and copying by others.

The evidence of copying, for example, demonstrates that the very features that Applicants have long argued make this invention patentable are the very features that those copying the invention use in their advertising. For example, the Weber unit described in Exh. 7 of Applicants' brief includes the description that "with this easy use remote system you will always when perfectly done is about to become overcome." (Exh. 7 at 1 (emphasis added.)) This goes to Applicants' argument that *Tymkewicz* still requires the operator to play a part in determining when the food meets his/her taste preference.

In addition, the unit described in Exh. 9 includes the sales pitch that "this wireless thermometer alerts you when the meat has reached the perfect temperature." (Exh. 9 at 1 (emphasis added).) Again, in the claims the microprocessor does calibration for taste and choice preference. This is in contrast to *Tymkewicz*. Accordingly, the evidence of copying directly pertains to the claimed invention. Indeed, if these features made the parent applications patentable, then they also make the instant claims patentable. The fact that the claims of the present application may be of a different scope than the parent applications because they do not include features such as a "curved probe," make them no less patentable. Indeed, it is because these claims recite the very features that made the parent applications allowable that they should be allowed.

Finally, the commercial success of Applicants' wireless meat thermometer system speaks for itself.

Dated: January 13, 2009

Respectfully submitted,

By 

~~Orville R. Cookings~~

Registration No.: 42,424

LERNER, DAVID, LITTENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

(908) 654-5000

Attorney for Applicant